

IN THE ELEVENTH JUDICIAL CIRCUIT, STATE OF MISSOURI
CIRCUIT JUDGE DIVISION

STATE OF MISSOURI, ex rel.)	
Attorney General Chris Koster,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	
WEST COUNTY REMODELING &)	
EXTERIORS, LLC,)	
)	Division:
Serve Registered Agent:)	
Timothy Bagby)	
1141 Arbor Creek Drive Apt 1D)	
Saint Louis MO 63122)	
)	
and)	
)	
ZACHARY MIKUS,)	
an individual)	
)	
Serve at:)	
3536 St. Genevieve)	
St. Ann, MO 63074)	
)	
Defendants.)	

**PETITION FOR PRELIMINARY AND PERMANENT INJUNCTIONS,
RESTITUTION, CIVIL PENALTIES, AND OTHER COURT ORDERS**

Plaintiff, State of Missouri, at the relation of Attorney General Chris Koster, brings this Petition for Preliminary and Permanent Injunctions, Restitution, Civil Penalties and Other Court Orders against Defendants, and, upon information and belief, states as follows:

Parties

1. Chris Koster is the duly elected, qualified and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to statutory authority of the office of the Attorney General, including but not limited to Chapter 407, RSMo (as amended), and regulations promulgated thereunder.¹

2. Defendant West County Remodeling & Exteriors, LLC is an active Missouri limited liability corporation with its principal place of business at 1141 Arbor Mist Court, Apt. 1D, St. Louis, MO 63122. Its registered agent is Timothy Bagby who resides at 1141 Arbor Mist Court, Apt. 1D, St. Louis, MO 63122.

3. Defendant Zachary Mikus is a natural person who resides at 3536 St. Genevieve, St. Ann, MO 63074. Defendant Mikus is being sued in his individual capacity.

4. Defendant Zachary Mikus is an organizer of Defendant West County Remodeling & Exteriors, LLC. Defendant Zachary Mikus had direct control over the day-to-day operations of Defendants West County Remodeling & Exteriors, LLC, and is individually liable for the violations of Chapter 407 in the State of Missouri alleged herein.

¹All statutory references are to the Revised Statutes of Missouri (2012), as presently amended, unless otherwise indicated.

5. Defendants West County Remodeling & Exteriors, LLC, and Mikus (“Defendants”) have done business within the State of Missouri, including St. Charles County, by marketing, offering, selling, or providing roof repair, replacement, and other home repair or construction services to consumers within the State of Missouri.

6. All references to Defendants include acts individually, in concert, or by or through principals, officers, directors, members, employees, agents, representatives, affiliates, assignees and successors of Defendants.

Jurisdiction

7. This Court has subject matter jurisdiction and personal jurisdiction over the Defendant under Art. V, § 14 Mo. Const.

8. This Court has authority over this action pursuant to § 407.100, which allows the Attorney General to seek injunctive relief, restitution, penalties, and other relief in circuit court against persons who violate § 407.020.

Venue

9. Venue is proper in this Court pursuant to § 407.100.7, which provides that “[a]ny action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business.”

10. Defendants advertised, marketed, solicited, or sold merchandise, including home repair and contracting services in at least one location in St. Charles County, Missouri, among other places, and has engaged in the acts, practices, methods, uses, and conduct described below that violate § 407.020.

The Missouri Merchandising Practices Act

11. Section 407.020 of the Merchandising Practices Act provides in pertinent part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice.... Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement, or solicitation.

12. “Person” is defined as “any natural person or his legal representative, partnership, firm, for-profit or not-for-profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.” § 407.010(5).

13. “Merchandise” is defined as “any objects, wares, goods, commodities, intangibles, real estate, or services.” § 407.010(4).

14. “Sale” is defined as “any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or on credit.” § 407.010(6).

15. “Trade” or “commerce” is defined as “the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms “trade” and “commerce” include any trade or commerce directly or indirectly affecting the people of this state.” § 407.010(7).

16. Defendants have advertised, marketed, and sold merchandise within the meaning of § 407.010.

17. Pursuant to authority granted in § 407.145, the Attorney General has promulgated rules explaining and defining terms utilized in §§ 407.010 to 407.145 of the Merchandising Practices Act. Said rules are contained in the Missouri Code of State Regulations (CSR). The rules relevant to Plaintiff’s Merchandising Practices Act allegations include, but are not limited to, the provisions of 15 CSR 60-3.010 to 15 CSR 60-14.040. These rules are adopted and incorporated by reference.

Allegations of Fact Common to All Counts

18. In early 2013, the roof of Robert J. Giery’s home, located at 537 Boulder River Drive, O’Fallon, MO 63368, sustained serious hail damage.

19. Upon inspection, and based on the extent of the hail damage to

Mr. Giery's roof, Mr. Giery's insurance adjuster authorized a full roof replacement. The insurance company estimated the damage to the roof to be \$5,811.00.

20. Mr. Giery then contacted a construction company, Cannon Builders, for an estimate and its representative Keith Anderson inspected the damage to his roof. There was no follow up from Cannon Builders.

21. Keith Anderson returned to Mr. Giery's home in or around early April 2013, and indicated he was then a representative of Defendant West County Remodeling and Exteriors, LLC.

22. Mr. Giery received an offer from Defendants to replace his roof for \$5,811.00.

23. On April 12, 2013, Mr. Giery accepted the offer and gave the requested deposit payment in the amount of \$2,935.13 to Anderson in the form of a personal check payable to "West County Remodeling and Exteriors, LLC".

24. On April 13, 2013, Anderson contacted Mr. Giery asking for additional money to do the job and Mr. Giery refused to provide the additional funds.

25. On April 14, 2013, the Defendant Zachary Mikus and Keith Anderson visited Mr. Giery at his home. They asked that Mr. Giery sign a second contract, which stated a higher total price for the roof replacement.

Mr. Giery refused to do so and Defendants agreed to honor the original contract price of \$5,811.00.

26. To date, no work or repairs have been performed per Giery's contract with Defendants Zachary Mikus and West County Remodeling & Exteriors, LLC.

27. Giery contacted Defendant Zachary Mikus on or about June 26, 2013, and requested a refund of his initial deposit by July 4, 2013. Giery did not receive a response to his request and to-date has not been refunded the amount of his initial deposit.

Count I-False Promises
(Against all Defendants)

28. Plaintiff incorporates all of the allegations contained in paragraphs 1 through 27.

29. Defendants have engaged in methods, acts, uses and practices of false promises in connection with the sale of construction, remodeling and roofing services, in violation of § 407.020 by falsely promising construction and home remodeling services to consumers, which was false or misleading as to Defendants' intentions or ability to perform the promise or the likelihood the promise would be performed.

Count II-Misrepresentation
(Against all Defendants)

30. Plaintiff incorporates all of the allegations contained in paragraphs 1 through 29.

31. Defendants have engaged in methods, acts, uses and practices of deception in connection with the sale of construction, remodeling and roofing services, in violation of § 407.020 by using the method, act, use, practice, advertisement or solicitation to consumers that for an agreed-upon up-front payment, Defendants would provide construction, home remodeling and/or roofing services contracted, which had the tendency or capacity to mislead, deceive or cheat, or that tended to create a false impression.

Count III-Unfair Practices and Fraud
(Against all Defendants)

32. Plaintiff incorporates all of the allegations contained in paragraphs 1 through 31.

33. The contract provided by Defendants to at least one consumer was a consumer contract. The unambiguous terms of the contract stated that in exchange for a down payment, Defendants would provide roof repair services.

34. Defendants have engaged in unfair practices in violation of § 407.020 by unilaterally breaching unambiguous terms of a consumer contract, to wit: failing to perform work on at least one consumer's roof,

despite receiving a down payment, in violation of the consumer's contract with Defendants.

Relief

WHEREFORE, Plaintiff prays this Court enter judgment:

A. Finding that Defendants have violated the provisions of § 407.020.

B. Issuing preliminary and permanent injunctions prohibiting and enjoining Defendants and their agents, servants, employees, representatives, and other individuals acting at their direction or on their behalf from:

- i. Owning, managing, operating, performing, offering, advertising, soliciting, or selling any home remodeling, home repair or construction services in the State of Missouri, except to the extent necessary to complete work already paid for by Missouri homeowners;
- ii. Expending or otherwise disposing of any funds that Defendant received from Missouri homeowners as initial, up-front, or down payments for work that has not yet been completed.

C. Requiring Defendant, pursuant to § 407.100.4, to provide full restitution to all consumers who suffered any ascertainable loss.

D. Requiring Defendants, pursuant to § 407.100.6, to pay to the

State a civil penalty in such amounts as allowed by law per violation of Chapter 407 that the Court finds to have occurred.

E. Requiring Defendants pursuant to § 407.140.3, to pay to the State an amount of money equal to ten percent (10%) of the total restitution ordered against Defendant, or such other amount as the Court deems fair and equitable.

F. Requiring Defendant, pursuant to § 407.130, to pay all court, investigative, and prosecution costs of this case.

G. Granting any additional relief that is just or proper.

Respectfully submitted,

Chris Koster
Attorney General

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